

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from South Dakota.

CLASS ACT

Mr. THUNE. Madam President, I rise to speak to an issue that I think has been on the minds of a lot of people here and hopefully people across this country too; that is, this failed CLASS Act Program, which last week we finally got some—I would characterize it as good news because I think this is a program that was destined to fail.

On Friday last week, Secretary of Health and Human Services Kathleen Sebelius came out and said: Despite our best analytical efforts, I do not see a path forward for CLASS implementation at this time.

Essentially, what came with that and what accompanied that was a big volume of analysis that had been done that essentially supports the conclusion that it doesn't add up. We can't make the math work. I think that is something that hopefully my colleagues, as what we know now, will recognize; that we ought to eliminate and we ought to repeal this CLASS Act once and for all. That is something I tried to do as we were debating the health care bill almost 2 years ago. I offered an amendment in December of 2009 that would repeal the CLASS Act, believing at the time it wasn't going to work. We had, at that time, plenty of evidence to that effect. Unfortunately, it was included as a part of the health care reform bill to help pay for it. At that time, it was estimated it would generate about \$70 billion in revenue to be used to offset the cost of the health care bill or at least to put it in balance and to claim there was some deficit reduction associated with it.

I think the more recent estimate of what it would generate in terms of revenues in the early years is on the order of about \$86 billion. But we—those of us who have been skeptics about this program—suggested at the very beginning that this was not, in fact, the case, that it was a budgetary gimmick, and that it was going to saddle the Nation with additional debts. That was what the Congressional Budget Office concluded. There would be revenue in the early years, but as you got into the outyears, as the premiums came in there would be some revenues, but in the outyears, when the demands on the program started to come in, it just didn't add up and would add significantly to the Federal deficit. I think that is a conclusion now that has been drawn even by those who supported the program.

So my thinking at this time is that we, as a Senate—and hopefully the House of Representatives—ought to move to repeal the CLASS Act once and for all. We should not leave this on the books and allow it to become an opportunity at some point in the future for someone to say we ought to try to reactivate this or implement

this, knowing full well it does not work.

There were a lot of warning signals along the way that were ignored. There were repeated warnings by the Actuary and the administration that this was not going to work that were ignored by the Obama administration in their push to pass health care reform.

We did a report not that long ago. There was a working group that examined this. The report was called "CLASS's Untold Story." It was myself and some of my colleagues in the Senate and some of my House colleagues who requested it and delved into a lot of the e-mail traffic that occurred prior to its inclusion in the health care reform bill. We came across a number of warnings that were issued by the HHS Actuary.

The Chief Actuary predicted at the time that this would result in an "insurance death spiral." He said:

This could be a terminal problem for this program. The program is intended to be actuarially sound, but at first glance this goal may be impossible. The resulting premium increases required to prevent fund exhaustion would likely reduce the number of participants, and a classic assessment spiral or insurance death spiral would ensue.

That was in May 2009. In May 2009, that warning was coming from the Actuary at HHS.

Some time passed. This continued to be part of the discussion with regard to the health care bill. Come August or July of 2009—and this was again after additional analysis, review, and examination of this particular proposal—the Actuary went on to say:

Thirty-six years of actuarial experience lead me to believe that this program would collapse in short order and require significant Federal subsidies to continue.

It would collapse in short order. That is what was said by the HHS Actuary in July of 2009.

So they continued to plow forward, thinking that somehow they were going to be able to salvage this program, figure out a way to make it work.

In the August and September timeframe of 2009, the Actuary again says:

As you know, I continue to be convinced that the CLASS proposal is not actuarially sound.

That was the expert advice that was given to the administration about this proposal way back in 2009. Yet they plowed ahead and in December 2009 added it to the health care bill, assuming it would help offset the cost of that health care legislation.

At the time, many of my colleagues here on the floor talked about what a great program it was and how it all was going to pay off and was all going to balance out. We had people say it was a critical program, it was a breakthrough program, it was a win-win. We had Democrats come over here and talk about the virtues of this program—I believe knowing full well there were questions about it.

Having said that, there was a big push on at the time to pass health care

reform. As a consequence, this piece of that reform was included notwithstanding our efforts to repeal it or to strike it at the time. So we went forward. Here we are now 18, 19 months later, and there is full recognition of the fact that this does not pencil out, it does not add up, the math flat does not work.

Where do we go from here? In my view, what we ought to be doing is repealing this bill, which is why it seems mystifying to me that the administration is now suggesting that if Congress were to repeal the CLASS Act, he would veto the repeal bill. You have all this actuarial data; you have all these statements; you now have all this analysis that has been done that demonstrates the very point we were making at the initial consideration of this; that is, it was just not going to work.

So I hope and invite my colleagues here on both sides of the aisle to join me in the effort to repeal this legislation. I introduced a bill, along with Senator GRAHAM, back in April of this year that would repeal the CLASS Act. It has 32 cosponsors. I hope we get enough cosponsors here in the Senate to where we can put an end to this once and for all.

We are going to be looking for opportunities to do that in the weeks and the months ahead because, as I said, this is something that clearly does not work. It now not only has all the arguments that were being made at the time prior to its passage, but subsequent to its passage all the analysis that has been done comes to the same conclusion; that is, the numbers just do not add up.

What does that mean for the future of long-term care? I submit there are other things we should do. I don't think this is an issue which is going to go away. We have more people who are living longer in this country. Long-term care is a very serious issue. But going about it and trying to fix it in a way that would burden future generations with more and more mountains of debt piled on their backs—the cost of this over time—is the wrong way to go about it, and that is precisely what this particular approach would do.

We have had many discussions about various remedies for the long-term care issue. We will continue to put our ideas forward in hopes we can address it as part of some bill that would take a look and examine these issues but do it in a way that is fiscally responsible, fiscally sound, that is actuarially sound, and that does not create the massive amount of borrowing, the massive amount of debt, and that does not put in place a flawed program that we knew at its inception was not going to work.

I hope we will put an end to this, that we can get colleagues on both sides together to agree to that, and that we will be able to add cosponsors to that piece of legislation and look for the first opportunity to repeal this legislation and make sure we end it once and

for all, knowing full well this was ill-conceived and ultimately would be a failed program.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Kansas.

Mr. MORAN. I ask unanimous consent to address the Senate for up to 10 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

GIPSA

Mr. MORAN. I am here today, as we debate H.R. 2112, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, to address a particular provision that, in my view, needs to be addressed. I also hope to have the opportunity later today to offer an amendment regarding the Watershed Rehabilitation Program and to allocate some additional funds for that program, and I hope to have the chance to speak during the debate on this bill on the proposed school lunch regulations the Senator from Maine has so appropriately addressed previously.

At this time, I would like to turn my attention to a problem with the pending legislation; that is, its failure to address the proposed rule titled "Implementation of Regulations Required Under Title XI of the Food, Conservation, and Energy Act of 2008; Conduct in Violation of the Act," commonly known as the GIPSA rule. This proposed rule has the potential to adversely affect livestock producers in my State and around the country, as well as consumers of meat products.

The House included a funding limitation on implementation of this rule in its appropriations bill. That is not included in the Senate version of the bill. I am a member of the agricultural appropriations subcommittee and believe that, in this case, the House is correct.

Initially, this rule that the Department of Agriculture is proposing grew out of the 2008 farm bill. As a Member of the House of Representatives back then, I was a member of the conference committee that developed that farm bill. It directed the Department of Agriculture to issue regulations in five very discrete areas.

In June 2010, the Department of Agriculture responded with the issuance of its proposed GIPSA regulations that clearly went way beyond the mandate of that 2008 farm bill and way beyond the Department of Agriculture's authority under the Packers and Stockyards Act. The GIPSA rule as written is exactly the type of burdensome regulation that was the focus of our President's January 18 Executive order.

In addition to the Executive order, the President promised to have a very transparent and open administration in regard to the development of rules. Unfortunately, the process surrounding the GIPSA rule has been far from transparent. This rule was proposed

with zero economic analysis from the Department despite the major impacts it could have on the agricultural economy.

For months, USDA denied that this would be an economically significant rule, until multiple private sector studies and overwhelming comments from agricultural producers and others, such as those in my home State of Kansas, finally convinced the USDA this rule would indeed have a significant economic impact. Private analysis at that time indicated that these GIPSA regulations, if finalized as proposed, would cost the U.S. meat and poultry industry nearly \$1 billion.

Under this pressure, the Department of Agriculture is now conducting an economic analysis. While I certainly welcome that economic analysis, I am very concerned about whether this analysis will be made public before a final rule is announced and whether the public will be able to analyze and comment on the data and methodology used by USDA to complete the study.

In fact, I asked the Secretary of Agriculture, during an agriculture appropriations subcommittee hearing, if he would release that economic analysis before the comment period concluded or open a comment period after the analysis is complete so people can make comments based upon what the economic analysis demonstrates. Certainly, in my view, the Secretary failed on a number of occasions to answer my question and give me that commitment that the process would be open and transparent and that a comment period would occur.

I sincerely believe it is incumbent upon this Congress to exercise its oversight discretion and direct the necessary transparency and thoughtful analysis that USDA to date has not publicly provided. We need time to study and comment on the methodology, and we need to make sure we get these rules right if they are going to be implemented. It would be irresponsible to not adjust the rules to mitigate a negative economic impact determined by the Department's own economic analysis.

As I mentioned, the House included a provision barring funding for the current proposed GIPSA regulations, and USDA should be delayed from going forward until it can limit itself to the five areas set forth in the farm bill—its congressional authority—and until public comments can occur regarding that economic analysis. We ought not have a final rule without the benefit of the economic analysis. The Department of Agriculture should not just be going through the motions because there was insistence that an economic analysis occur. We need to be able to mitigate any negative impacts that we learn from that economic analysis.

Madam President, I appreciate the opportunity at this point in the day to address an issue that is appropriate as we discuss the agricultural appropriations bill throughout today. I look for-

ward to being back on the floor later today to offer an amendment to that bill regarding watershed rehabilitation and also at that time to speak in regard to what I view as some crazy ideas that are proposed School Lunch Program regulations.

The ACTING PRESIDENT pro tempore. The Senator from Maryland.

ANTHRAX ATTACKS

Mr. CARDIN. Madam President, I rise to remember the 10th anniversary of the anthrax attacks on our country.

During the weeks following the terrorist attacks of September 11, 2011, our Nation was exposed to chemical warfare for the first time.

Two anthrax attacks were delivered through our country's postal system. The first set of letters was mailed to media outlets, including ABC, CBS, NBC, the National Enquirer, and the New York Post in September.

Three weeks later, two other anthrax letters were mailed to U.S. Senators—Senator Daschle and Senator PATRICK LEAHY. The letter to Senator LEAHY never made it to Capitol Hill. The envelope addressed to Senator Daschle, however, was opened on October 15 in the Hart Senate Office Building in the mailroom of the office I use today. Emergency responders rushed to join Capitol Police to evaluate the situation and determine the extent of contamination.

It was 10 years ago this week on October 17, 2001, the Capitol was evacuated. At that time I was a Member of the House of Representatives. I remember the fear and trepidation all Americans felt in the days and weeks following September 11.

I take this time to honor the courage of our Nation's Federal employees. Two made the ultimate sacrifice, dying from the exposure of the deadly anthrax toxin at the postal facility that handled all the mail that came to the Senate and House offices. U.S. postal workers Thomas L. Morris, Jr. and Joseph P. Curseen, Jr. gave the ultimate sacrifice after being exposed to the infected Senate mail while they worked in the Brentwood post office facility here in Washington, DC.

Mr. Morris and Mr. Curseen were Maryland residents. Like so many other Federal employees, they went to work every day, serving the American people and trying to earn a living for themselves and their families. Less than a week after being exposed to the deadly anthrax at the mail facility, both men died of their exposures.

The Brentwood postal facility, which was shuttered for months while the building was disinfected, now proudly bears their names, honoring two Federal employees who died doing their jobs.

Literally thousands of other Federal employees bravely went back to work, making sure our government continued to function in the most uncertain of times. While most Federal workers